



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NY 10007-1866

MAR 10 2017

Jacqueline Lendrum, Section Chief
Division of Water
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-3500

Re: New York Proposed CWA CAFO General Permit No. GP-0-16-002

Dear Ms. Lendrum:

The U.S. Environmental Protection Agency ("EPA") has completed its review of the New York State proposed Clean Water Act ("CWA") Concentrated Animal Feeding Operations ("CAFO") General Permit ("Permit") that the New York State Department of Environmental Conservation ("NYSDEC") published on January 25, 2017. In our March 17, 2016 comment letter to you regarding the draft CWA CAFO permit issued on December 23, 2015, the EPA reiterated the permit review process described in the Memorandum of Agreement between the EPA and the NYSDEC, which authorizes the NYSDEC's State Pollutant Discharge Elimination System ("SPDES") Program, as well as the applicable regulations. The NYSDEC has made substantial changes to the permit since it was issued as draft, therefore, the EPA reviewed the most recent iteration of the CWA CAFO general permit as a proposed permit.

We note that the NYSDEC is taking an important step by reissuing this permit and commend the progress that has been made since the earlier iteration of the CWA CAFO general permit, which has been administratively continued since June 30, 2009. We also recognize the extensive outreach that the NYSDEC has conducted to help the public and regulated community better understand the proposed permit and New York's CAFO program. The proposed permit has addressed many of our comments and those received from the public. Nevertheless, we believe that certain aspects of the proposed permit warrant further consideration by the NYSDEC, particularly with respect to transparency, state oversight, and opportunities for public participation. We have provided details in Appendix A. For ease of review, we have also included marked up versions of the permit and fact sheet that outline revisions that we believe will ensure consistency with federal regulations. The EPA also notes that the Responsiveness Summary does not mention the fact that the EPA provided comments on the draft permit.

We recommend that the NYSDEC revise the proposed permit to address these matters. Short of that, we recommend the development of a public guidance document, which may include answers to Frequently Asked Questions, prior to the effective date of the permit. Such a document would explain how the permit will be interpreted and enforced consistent with the federal requirements we have identified and which will provide clarity to the public and the regulated community about how the public participation and state oversight processes will function. The EPA looks forward to working with the NYSDEC on any documents that are developed.

Thank you in advance for your cooperation. We would be happy to meet with you and your staff to discuss our comments and proposed revisions at your convenience. To schedule a meeting or to discuss any questions, please contact me at (212) 637-3730, or you may contact Andrea Coats at (212) 637-3850.

Sincerely,

A handwritten signature in black ink, appearing to read 'Alyssa Arcaya', with a long horizontal stroke extending to the right.

Alyssa Arcaya, Acting Chief
Clean Water Regulatory Branch
Clean Water Division

Attachment(s) 3

cc. Douglas Ashline, Program Specialist, Division of Water, NYSDEC